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**November 3, 2014**

Bob Davies  
Race Chairman/CFO  
The Thunderboats Unlimited Club, Inc.  
9085 Kenamar Drive  
San Diego, CA 92121

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Elizabeth Maland  
City Clerk  
202 C Street  
San Diego, CA 92101

**Re: Notice of Intent to File Clean Water Act Citizens' Suit**  
**[33 U.S.C. § 1311, 1341, 1344 ]**

Dear Mr. Davies and Ms. Maland:

Please accept this letter on behalf of Coastal Environmental Rights Foundation ("CERF") regarding The Thunderboats Unlimited Club, Inc. ("Thunderboats")'s and the City of San Diego ("City")'s prior, continuing, and anticipated future unpermitted discharge of pollutants and unlawful dredge and fill activities in Mission Bay, San Diego, in violation of the Clean Water Act ("Act"). (33 U.S.C. §§ 1311, 1341, and 1344).

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator and various agency officials. (33 U.S.C. § 1365(b)(1)(A)). In compliance with section 505, this letter provides notice of both Thunderboats' and the City's violations and of CERF's intent to sue.

**I. BACKGROUND**

**A. San Diego Bayfair**

For fifty years, Thunderboats has been the sponsor and organizer of the San Diego Bayfair, a powerboat race in Mission Bay, San Diego. The annual three-day event has grown in size each year, and now has 23 individual racing classes and over 150 competition teams. Boats race at speeds over 225 miles per hour adjacent to the Kendall-Frost Mission Bay Marsh Preserve, Northern Wildlife Preserve, and four California least tern nesting sites in Mission Bay Park.

**B. Coastal Environmental Rights Foundation**

CERF is a California nonprofit public benefit corporation founded by surfers dedicated to the protection and enhancement of coastal natural resources, including local marine waters.

CERF's interests are adversely affected by Thunderboats' and the City's actions. CERF's mailing address is 1140 South Coast Highway 101, Encinitas, CA 92024. Its telephone number is (760) 942-8505.

Members of CERF use and enjoy Mission Bay. The public and members of CERF use Mission Bay to fish, sail, boat, kayak, water ski, wake board, paddle board, swim, dive, birdwatch, view wildlife, take nature photography, and to engage in scientific studies. The discharge of pollutants by Thunderboats and the City affects and impairs each of these uses.

Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by Thunderboats and the City's failure to comply with the Clean Water Act and Water Code.

**C. Unlawful Dredge and Fill For Launch Ramps**

San Diego Bayfair's participating boats are launched into the water near Crown Point Shores at one or two launch points. In preparation for the event, Thunderboats periodically levels these launch points. (See June 11, 2012 Letter to Bob Davies). This activity was documented in 2011 by Ms. Isabelle Kay, Manager and Academic Coordinator of the Natural Reserve System of University of California, San Diego:

It was observed that there were bulldozers working the sand just outside the Northern Wildlife Preserve fence. Volunteers working for Bayfair 2011 had leveled out the beach to create a smooth transition ramp from bay to the beach for the jet boats. Afterwards, they moved the sand around again. In the activity observed by Ms. Kay, they appeared to be dumping the sand into the bay. (June 11, 2012 Letter to Bob Davies)

As indicated in the aforementioned letter from the City of San Diego, and as evidenced by the accompanying photographs, Thunderboats "volunteers" have used and continue to use mechanized equipment to move sand and discharge this fill material into Mission Bay. According to one Thunderboats volunteer, this type of illegal work is done every year.<sup>1</sup>

In 2011, in particular, the sand was discharged into Mission Bay at low tide, well below the mean high tide line. (See September 19, 2011 email from Isabelle Kay). During the September 2011, 2012, and 2014 events, and previous years, the dredge and fill was done without an Army Corps of Engineers (ACOE) section 404 permit or 401 certification from the Regional Water Quality Control Board (Regional Board). Indeed, in 2013, the Regional Board notified Thunderboats its dredge and fill activities would require a 401 Water Quality Certification and that without such certification, Thunderboats was also in violation of the California Water Code. (See August 9, 2013 Letter from Regional Board).

Despite admonishments from the City, CERF, and the Regional Board, Thunderboats

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<sup>1</sup> The 2011 Event took place September 16 to September 18, 2011. The 2012 Event took place September 14 to September 16, 2012. The 2014 Event took place September 12 to September 14, 2014.

once again unlawfully dredged and discharged fill material into Mission Bay at Crown Point Shores in connection with this year's event (September 8-16, 2014). CERF representatives observed unlawful dredging and filling taking place at the north launch ramp in particular on September 11, 2014.

Just as it had in prior years, Thunderboats obtained a Special Event Permit from the City for its use of Crown Point Shores in 2014.<sup>2</sup> As the owner of Mission Bay Park, and the permitting authority for the Event's use of the Park, the City is also liable for Thunderboats' unlawful dredge and fill activities. (See Crown Point Shores webpage). Notably, despite being informed of the illegal activity, the City has failed to take any enforcement action against Thunderboats.

#### **D. Unlawful Dredge and Fill By Participating Boats**

On September 18, 2011, after a parachute apparently failed to deploy, a boat went off course and into the Northern Wildlife Preserve marsh located in Mission Bay.<sup>3</sup> Initial inspection of the Northern Wildlife Preserve<sup>4</sup> indicated a gouged area of 10 centimeters deep, 2 meters wide, and 60 meters long. This further constitutes an unlawful dredge and fill activity, in violation of the Act.

Thus, Thunderboats and the City have violated and continue to violate sections 1311, 1341 and 1344 of the Clean Water Act. These sections require that a 401 Certification and ACOE permit be obtained prior to the discharge of dredge or fill material into navigable waters. The Clean Water Act prohibits the "discharge of any pollutant," unless otherwise allowed by permit. (33 U.S.C. § 1311(a)). "Unpermitted discharge is the archetypal Clean Water Act violation, and subjects the discharger to strict liability." (*United States v. Pozsgai*, 999 F.2d 719, 725 (3d Cir. 1993)).

## **II. CLEAN WATER ACT VIOLATIONS**

As detailed below, the Thunderboats and City's discharge of dredged or fill material constitutes a violation of the Clean Water Act. "To establish a *prima facie* case, the [plaintiff] must show the alleged violator: 1) discharged dredged or fill material; 2) from a point source; 3) into the waters of the United States; 4) without a permit issued under Section 404 of the CWA." (*United States v. Lambert*, 915 F. Supp. 797, 802 (S.D. W. Va. 1996) citing *United States v.*

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<sup>2</sup> Pursuant to the 2014 Special Event Permit, Thunderboats was given permission for: (1) set-up from September 8 to September 12, 2014; (2) the event from September 12 to September 14, 2014; and (3) dismantling from September 14 to September 16, 2014.

<sup>3</sup> The Clean Water Act is a strict liability statute. Thus, whether the boat went off course accidentally or intentionally is irrelevant. "It has long been understood that the discharger need not be in control of the discharge to navigable waters for a violation of the CWA to occur; indeed, many violations occur because of spills, floods, breaking pipes, and so on." (*Umatilla Waterquality Protective Ass'n v. Smith Frozen Foods*, 962 F. Supp. 1312, 1322 (D. Or. 1997); see also, *SED, Inc. V. City of Dayton*, 519 F. Supp. 979, 989 (D. Ohio 1981) [discharge of pollutants extends to indirect, accidental, and unintentional additions of pollutants to navigable waters]).

<sup>4</sup> Wetlands generally include swamps, marshes, bogs, and similar areas. (33 CFR 328.3).

*Schallom*, 998 F.2d 196, 198 (4th Cir.), cert. denied, 126 L. Ed. 2d 228, 114 S. Ct. 277 (1993); *Avoyelles Sportsmen's League, Inc. v. Marsh*, 715 F.2d 897, 922 (5th Cir. 1983)).

**A. Thunderboats Discharged Dredge or Fill Material.**

"The term dredged material means material that is excavated or dredged from waters of the United States." (33 C.F.R. 323.2 (c)). Fill material means material placed in waters of the United States where the material has the effect of: (i) replacing any portion of a water of the United States with dry land; or (ii) changing the bottom elevation of any portion of a water of the United States. Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.(33 C.F.R. 323.2(e)).

Discharge is defined in the Act as "any addition of any pollutant to navigable waters from any point source." (33 U.S.C. § 1362(12)). The term discharge of fill material specifically includes discharge of sand:

The term discharge of fill material means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills;... beach nourishment..." (33 C.F.R. 323.2(f)).

The ACOE regulations further define "discharge of dredged material" in relevant part as "any addition of dredged material into, including any redeposit of dredged material other than incidental fallback within, the waters of the United States." (33 CFR 323.2 (d)(1) (emphasis added)). As found in *United States v. M.C.C. of Florida*, 772 F.2d 1501, 1505-1506 (11th Cir. Fla. 1985), redepositing vegetation and sediment on adjacent marsh land constitutes a discharge from a point source (a vessel).

Thus, both activities, the beach leveling and the boat running off course, clearly resulted in a discharge of dredge or fill material. Thunderboats and the City discharged dredge and fill material (sand) into Mission Bay when volunteers used bulldozers to move and deposit sand from Crown Point Shores into Mission Bay. Indeed, aerial photographs show the annual long-term discharge has likely changed the bottom elevation of Mission Bay, replacing portions of the Bay with land. (33 C.F.R. 323.2(e)).

Likewise, the vessel that veered into the Northern Wildlife Preserve discharged dredge material by redepositing sediment and vegetation dredged as the boat plowed through the marsh.<sup>5</sup> Because the vessel did so while participating in the Thunderboats' San Diego Bayfair event, Thunderboats is responsible and liable for the discharge and resultant damage.

In that regard, because liability is predicated on either performance of the work or control over performance of the work, Thunderboats' contractors or "volunteers," Thunderboats, and the City are all liable for the unlawful dredge and fill activities. (*Sierra Club v. MasTec N. Am.*,2007

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<sup>5</sup> The discharge of a pollutant is also a violation of section 1342. The Clean Water Act section 1362 definition of "pollutant" includes dredged spoil, biological materials, rock and sand.

U.S. Dist. LEXIS 92489 (D. Or 2007); see also, *United States v. Lambert*, 915 F. Supp. 797, 802 (S.D. W. Va. 1996), citing *United States v. Board of Trustees of Fla. Keys Community College*, 531 F. Supp. 267, 274 (S.D.Fla. 1981)).

**B. The Boat and the Bulldozers Constitute Point Sources**

Under the Clean Water Act, a "point source"<sup>6</sup> is defined as "any discernible, confined and discrete conveyance... including but not limited to any...vessel or other floating craft, from which pollutants are or may be discharged." (33 U.S.C. § 1362(14) (emphasis added)). Thus, the boat that went off course into the sensitive marsh habitat constitutes a point source.

As to the bulldozers, "[i]n situations where an individual has been unlawfully dumping fill dirt on wetlands, the courts have consistently found that dump trucks, trailer trucks, bulldozers, and earth graders all qualify as 'point sources' for purposes of the CWA." (*In re Alameda County Assessor's Parcel Nos. 537-801-2-4 & 537-850-9*, 672 F. Supp. 1278, 1284-1285 (N.D. Cal. 1987), citing *Avoyelles Sportsmen's League, Inc. v. Marsh*, 715 F.2d 897, 922 (5th Cir. 1983); *United States v. Tull*, 615 F. Supp. 610, 622 (E.D. Va. 1983); *United States v. Weisman*, 489 F. Supp. 1331, 1337 (M.D. Fla. 1980); *United States v. Robinson*, 570 F. Supp. 1157, 1163 (M.D. Fla. 1983); *United States v. Holland*, 373 F. Supp. 665, 668 (M.D. Fla. 1974) [bulldozers are point sources]).

Thus, both discharges are point source pollution under the Act.

**C. Mission Bay is a Navigable Water.**

The third element of a Clean Water Act section 404 *prima facie* case requires that the dredged or fill material be deposited into a navigable water of the United States. Here the fill activity and boat dredged material were discharged into Mission Bay, a navigable water of the United States.

Navigable waters is defined as waters of the United States. The EPA broadly defines "waters of the United States" to include "waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide." (40 C.F.R. § 122.2(a); see also, 33 C.F.R. § 329.4 ["Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce..."]).

Mission Bay, a navigable, coastal body of water, is subject to the ebb and flow of the tide and has been used for interstate commerce. Mission Bay is therefore a "navigable water" under the meaning of the Act.

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<sup>6</sup> In contrast, non-point source pollution "is widely understood to be the type of pollution that arises from many dispersed activities over large sources of water pollution and is not traceable to any single discrete source." *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Forsgren*, 309 F.3d 1181, 1184 (9th Cir. 2002). Here, Thunderboat's pollution is traceable to a "single discrete source."

**D. Thunderboats Does Not Have a 404 Permit.**

Thunderboats does not currently hold a 404 permit for the aforementioned dredging and filling activities. Neither does the City. Further, both Thunderboats and the City failed to obtain 401 certification for the necessary 404 permit. (33 U.S.C. §1341).

An "effluent standard or limitation" is defined to include a "certification under section [401 of the CWA]", as well as any "unlawful act under subsection (a) of section 1311 of [Title 33]." See 33 U.S.C. § 1365(f)(1), 1365(f)(5). Because certification under Section 401 is an "effluent standard or limitation" under the Act, Plaintiffs are clearly authorized by Section 505 to bring a citizens suit alleging violation of Section 401.

(*N.C. Shellfish Growers Ass'n v. Holly Ridge Assocs., L.L.C.* (E.D.N.C. 2001) 200 F.Supp.2d 551, 558). As mentioned above, a failure to obtain 401 certification also constitutes a violation of California Water Code section 13376 and the waste discharge prohibition of the Basin Plan.

**III. CONCLUSION**

In summary, Thunderboats' and the City's unpermitted discharge of dredge and fill material is a violation of 33 U.S.C. § 1344. The discharge of fill material (sand) in order to create smooth launch ramps into Mission Bay, a navigable water of the United States, requires a Clean Water Act section 404 permit and 401 certification. The dredging and redeposition of sediment and vegetation in the National Wildlife Preserve, also within Mission Bay, further constitutes an unpermitted dredge and fill activity pursuant to the Clean Water Act.

Moreover, "[e]ach day the pollutant remains in the wetlands without a permit constitutes an additional day of violation." (*Sasser v. Administrator, United States EPA*, 990 F.2d 127, 129 (4th Cir. 1993); see also, *Swinomish Indian Tribal Cmty. v. Skagit County Dike Dist. No. 22*, 618 F. Supp. 2d 1262, 1266 (W.D. Wash. 2008) ["The ongoing presence of fill materials without a permit represents a continuing violation of the CWA."]).

Thunderboats and the City have therefore violated and continue to violate 33 U.S.C. §§ 1311(a), 1341, and 1344(1).

**IV. REMEDIES**

CERF's action will seek all remedies available under the Clean Water Act. (33 U.S.C. § 1365(a)(d)). "In suits under Section 505 of the Clean Water Act, citizens have access to the same remedies available to the EPA." (*Student Public Interest Research Group, Inc. v. Georgia-Pacific Corp.*, 615 F. Supp. 1419, 1425 (D.N.J. 1985), citing *Middlesex County Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 13-14 (1981)).

Pursuant to Section 309(d) of the Clean Water Act and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$37,500 per day for all violations occurring during the period commencing five years prior to the date upon which this notice is served.

In addition to civil penalties, CERF will seek injunctive relief preventing further violations of the Clean Water Act pursuant to sections 505(a) and (d), declaratory relief, and such other relief as permitted by law. Section 505(d) of the Clean Water Act permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

Unless Thunderboats and the City file an application for a 401 certification and 404 Permit for future dredge and fill activities and propose a remediation and mitigation plan for past unlawful dredge and fill activities, CERF will file an action against Thunderboats and the City for their prior, continuing, and anticipated violations of the Clean Water Act. CERF may also seek a court order to prevent the City and Thunderboats from additional unlawful dredge and fill activities prior to the 2015 San Diego Bayfair event.

CERF has retained legal counsel to represent them in this matter. All communications should be addressed to:

**Marco A. Gonzalez  
COAST LAW GROUP LLP  
1140 S. Coast Highway 101  
Encinitas, CA 92024  
Tel: (760) 942-8505 x 102  
Fax: (760) 942-8515  
Email: marco@coastlawgroup.com**

CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

**COAST LAW GROUP LLP**

  
**Marco A. Gonzalez**

  
**Livia Borak**  
Attorneys for  
Coastal Environmental Rights Foundation

CC:

Jared Blumenfeld, Region 9 Administrator Alexis Strauss, Deputy Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA, 94105	Dave Gibson, Executive Officer Catherine Hagan, Staff Counsel San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, CA 92108-2700
Lieutenant General Thoms P. Bostick Commanding General U.S. Army Corps of Engineers Headquarters 441 G Street NW Washington DC 20314-1000	Colonel Kimberly M. Colloton U.S. Army Corps of Engineers Los Angeles District Regulatory Division 915 Wilshire Blvd. Los Angeles, CA 90017
Elizabeth Lucas Department of Fish and Wildlife 3883 Ruffin Road San Diego CA 92123	Deborah Lee California Coastal Commission 7575 Metropolitan Drive Ste 103 San Diego, CA 92108-4402
Ned Ardagna 571 Third Ave Chula Vista CA 91910	San Diego Bayfair P.O. Box 600426 San Diego, CA 92160 Email: Bayfairinfo@gmail.com
Carolyn Wormser City of San Diego Office of Special Events 1200 Third Ave, Ste 1326 San Diego, CA 92101	Isabelle Kay Natural Reserve System APM Prime Room #202 9500 Gilman Drive UC, San Diego La Jolla, CA 92093
Glenn Spitzer Deputy City Attorney San Diego City Attorney's Office 1200 Third Ave, 15 <sup>th</sup> Floor San Diego, CA 92101	

**Index of Attachments**

- 1 Letter to Bayfair from City of San Diego
- 2 Letter to Bayfair from Regional Board
- 3 Email from Isabelle Kay
- 4 Crown Point Shores Webpage
- 5 2014 San Diego Bayfair Event Timeline
- 6 Photographs



## **EXHIBIT 1**



## THE CITY OF SAN DIEGO

June 11, 2012

Mr. Bob Davies  
Thunderboats Unlimited/Bayfair  
9085 Kenamar Drive  
San Diego, CA 92121

Dear Mr. Davies:

As a result of the Bayfair 2011 event held the weekend of September 17, 2011 and September 18, 2011, in Mission Bay Park, several issues were noted as well as damage which occurred in the Northern Wildlife Preserve (Preserve) and in Mission Bay.

At the 2011 event, a boat went off-course and into the marsh on Sunday morning; September 18, 2011 at approximately 11:00 A.M. Apparently a parachute failed to deploy on one of the boats. Eyewitnesses said approximately eight people and another boat were required to extricate the vessel from the Preserve.

Initial inspection of the site was made by Isabelle Kay, Manager and Academic Coordinator at University California San Diego (UCSD). She reported the following:

The Preserve was examined at approximately 5:30 P.M., at low tide. At that time a gouged trace estimated to be 10 centimeters deep by 2 meters wide by 60 meters long extending from the edge of the marsh inward was revealed. The habitat at this location comprises of cordgrass (25%), *Jaumea carnosa* (20%), *Batis maritima* (30%), *Salicornia virginica* (24%), and *Limonium californicum* (1%). It was also reported that there was no evidence of hydrocarbon spills or significant trampling.

It was also observed that there were bulldozers working in the sand just outside the Northern Wildlife Preserve fence. Volunteers working for Bayfair 2011 had leveled out the beach to create a smooth transition ramp from bay to the beach for the jet boats. Afterwards, they moved the sand around again. In the activity observed by Ms. Kay, they appeared to be dumping the sand into the bay. It was suggested that they put the excess sand higher up the beach. The volunteers also pulled the sand away from the restoration site boundary fence. This was the practice due to the winds creating piles during the year making it a mere 4 feet or so jump into the Preserve. The volunteer told Ms. Kay that they have never received any instruction, guidelines or training regarding the bulldozing and its environmental impacts.



Developed Regional Parks Division • Park and Recreation

2125 Park Boulevard • San Diego, CA 92101-4792

Tel (619) 235-1100 Fax (619) 235-1160

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Mr. Bob Davies  
June 11, 2012

Due to these issues and damages, we are requesting that Bayfair 2011 hire a biologist to provide an independent report with their assessment of the damage to the Northern Wildlife Preserve. We are also requesting comment on the sand movement next to the marsh for the temporary ramps. If the biologist indicates a need for mitigation/restoration of any area mentioned above, a restoration report should be included in their response to the City. A response from Bayfair to the City of San Diego Park and Recreation Department and Developed Regional Parks Division, should be delivered within sixty working days from the receipt of the request.

As a condition of your permit for Thunderboats 2012, you are asked to comply with requirements in the Mitigated Negative Declaration LDR No. 40-0177, numbers 1-8. The final report is dated June 27, 2000.

Please feel free to contact me at [slmckenzie@sandiego.gov](mailto:slmckenzie@sandiego.gov) or (619) 235-1154 if you need additional information.

Sincerely,



Stacy McKenzie

SM/cma

- Enclosures:
1. Two (2) Photos of Northern Wildlife Damage
  2. One (1) Photo of Bull Dozer Work
  3. Mitigated Negative Declaration LDR No. 40-0177
  4. Initial Study LDR No. 40-0177

cc: Kathleen S. Hasenauer, Deputy Director, Developed Regional Parks Division  
Cindy Benetiz-Kodoma, Office of Special Events  
Debbie Marcotte, Permit Center Manager, Developed Regional Parks Division  
Lori Gerbac, Senior Park Ranger, Mission Bay Park  
Ema Moreno, Grounds Maintenance Manager, Mission Bay Park

## **EXHIBIT 2**

## California Regional Water Quality Control Board, San Diego Region

August 9, 2013

Mr. Bob Davies  
Race Chairman/CFO  
The Thunderboats Unlimited Club, Inc.  
9085 Kenamar Drive  
San Diego, CA 92121

**Subject: Alleged Illegal Fill to Waters of the United States and State of California**

Mr. Davies:

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has been informed that The Thunderboats Unlimited Club, Inc. (Thunderboats) allegedly violated California Water Code (Water Code) Section 13376 (failure to obtain a Clean Water Act section 401 Water Quality Certification) and Water Code Section 13050 (failure to comply with Waste Discharge Prohibition No. 1 of the Water Quality Control Plan for the San Diego Basin (Basin Plan)). This letter is being sent to notify you of your legal obligations when discharging dredge or fill material to waters of the State of California. The San Diego Water Board reserves the right to take any enforcement action authorized by law pertaining to this matter.

Allegations have been made that Thunderboats has unlawfully discharged dredge and fill material to Mission Bay, in the City of San Diego, by annual leveling of the sand at two boat launch points located at Crown Point Shores (annual sand leveling). Generally, discharges such as these, as well as mooring or placement of navigational aids, must be permitted by the San Diego Water Board through the issuance of a 401 Water Quality Certification. Additionally, Thunderboats may be required to obtain permits from other agencies including but not limited to United States Army Corps of Engineers and the California Coastal Commission.

The San Diego Water Board welcomes the opportunity to meet with Thunderboats to discuss the allegations. Please contact Alan Monji at (858) 637-7140 ([amonji@waterboards.ca.gov](mailto:amonji@waterboards.ca.gov)) to schedule a meeting or if you have questions regarding this notification.

Respectfully,



Kelly Dorsey, P.G.  
Senior Engineering Geologist

Mr. Bob Davies  
Thunderboats Unlimited Club, Inc

- 2 -

August 9, 2013

KD:cc:am

cc:

Robert R. Smith  
U.S. Army Corps of Engineers  
Regulatory Division  
5900 La Place Court, Suite 100  
Carlsbad, CA 92008  
PH: (760) 602-4837  
[Robert.R.Smith@usace.army.mil](mailto:Robert.R.Smith@usace.army.mil)

TOMÁS MORALES, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353 | (858) 467-2952 | [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)



RECYCLED PAPER



## **EXHIBIT 3**

Thanks for any information you provide.

Libby

>>> Isabelle Kay <[ikay@ucsd.edu](mailto:ikay@ucsd.edu)> 9/19/2011 6:11 PM >>>

Hi Libby, Nancy, Carolyn --

just wonder whether you are aware of these issues, and what the consequences might be for the Bayfair event organizers or the City of San Diego.

Isabelle

Begin forwarded message:

**From:** Isabelle Kay <[ikay@ucsd.edu](mailto:ikay@ucsd.edu)>

**Date:** September 19, 2011 4:37:05 PM PDT

**To:** Robert Little <[robert.little1939@sbcglobal.net](mailto:robert.little1939@sbcglobal.net)>, Lisa Levin <[llevin@ucsd.edu](mailto:llevin@ucsd.edu)>, "Gerbac, Lori Charett" <[LCharett@sandiego.gov](mailto:LCharett@sandiego.gov)>

**Subject:** marsh impacts resulting from Bayfair event Sept. 18, 2011

Hello All,

Last Sunday I visited the Mission Bay marsh with Robert ("Roy") Little during the "Bayfair" jet boat races. Standing in the SE area of the marsh (at the confluence of the west channel and the restoration site channel) at approx. 4:45 pm on the last day of the boat races, the racing jet boats increased the ambient noise by about 5 db, and the helicopters by 10 db, to result in 70-75 db as measured by Roy Little's handheld device.

Video and stills were taken of the boats and the birds in the marsh. There appeared to be a lot of shorebird movement, including sighting a LFCR flying, viewed from the overlook platform area on Crown Point Drive. Individual races did not seem to evoke immediate responses. It is possible that the birds were gathered in the marsh as other areas of the bay were taken over by the presence of people and noise. The regular osprey was present at the edge of the marsh during and following the races. A small wake was produced by the racing boats (5 cm at most) and it continued to come ashore for approximately 15 minutes afterwards.

A boat went off-course into the marsh on Sunday morning (approximately 11 am), apparently the result of a failure of a parachute to deploy (Lori Charett-Gerbac, Parks and Rec, pers. comm.) Eyewitnesses said there were approximately 8 men and another boat required to extricate it.

Examination of the site at low tide (approx. 5:30 pm) revealed a gouged trace approximately 10 cm deep by 2 m wide by 60 m long extending from the edge of the marsh. The habitat at this location comprises: cordgrass (25%), *Jaumea carnosa* (20%), *Batis maritima* (30%), *Salicornia virginica* (24%), and *Limonium californicum* (1%) (I.Kay visual estimate.) There was no evidence of hydrocarbon spills or significant trampling.

Upon leaving the marsh via the Stribley restoration area, I noticed bulldozers working in the sand just outside the Preserve fence. One of them stopped, and the driver came over to speak to us. Darryl said he is a volunteer who has been helping with the boat races every year. He levels out the beach to create a smooth transition ramp from bay to beach for the jet boats. Afterwards, he moves the sand around again; in this case they appeared to be dumping the sand into the bay; this was at low tide, so it was certainly below MLLW. I suggested that he and the other bulldozer operator put the excess sand higher up the beach, and he agreed it was a good idea. He also usually pulls the sand away from the restoration site boundary fence because as he noted, the wind piles it up during the year so that as a result, it is a mere four feet or so to jump over easily into the Preserve. He said he has never received any instruction or warning regarding what he is doing, or guidelines for doing it.

Ranger Charett-Gerbac said she would speak to the Bayfair organizer to find out what sort of mitigation they would be able to do.

Isabelle



## **EXHIBIT 4**



# Park & Recreation

## PARK & RECREATION HOME

## GENERAL INFORMATION

## RECREATION CENTERS AND POOLS

## PARKS & OPEN SPACE

## GOLF COURSES

## RECREATIONAL ACTIVITIES & PROGRAMS

[Park & Recreation Home](#) • [Parks & Open Space](#) • [Developed Regional Parks](#) • [Mission Bay Park](#) • [Crown Point](#)

### Parks & Open Space

- [Parks & Open Space Home](#)
- [Balboa Park, Mission Bay and Shoreline Permit Map](#)
- [Developed Regional Parks](#)
  - [Balboa Park](#)
  - [Mission Bay Park](#)
  - [Presidio Park Facilities and Permit Sites Map](#)
  - [Shoreline Park Facilities and Permit Sites Map](#)
- [Developed Regional Parks Ranger Program](#)
- [Park Use Permit Rules and Regulations](#)
- [Park Use Permits and Applications](#)
- [Open Space Canyons and Parklands](#)
- [Open Space Parks](#)
- [Other Regional Parks, Lakes & Beaches](#)
- [Night Time Park Closures](#)
- [Your Dogs and City Parks](#)

#### PARK FACILITIES MAP

#### GENERAL PARK FEE SCHEDULE (PDF)

#### CITY HOLIDAYS (PDF)

For general Park & Recreation Department information you can call (619) 525-8213 or use the [My Park](#) web comment form

#### CHECK FACILITY AVAILABILITY

#### MAPS

## Mission Bay Park Crown Point

**Crown Point North** can be permitted for up to 200 people with one inflatable. It has one picnic shelter, picnic tables, barbeque grills, fire rings, and a small tot lot nearby. There is also a swimming area staffed with a lifeguard in the summer months and a comfort station with a beach rinse-off shower at this site.

A permit for up to 400 people can be issued for the area called **Crown Point Middle**. This large grassy park near the bay has fire rings, picnic tables, and barbeque grills. There is also a boat launch and public-use (challenge) basketball courts. Up to two inflatables/party jumps can be brought into this area with a permit.

**Crown Point South** has a large sandy beach with a smaller grass area than the others. A permit for up to 350 people with up to two inflatables/party jumps can be issued for this area. There is a comfort station with a beach rinse off shower, fire rings, picnic tables, and barbeque grills.

**Note:** The parking lot closes at 10:00 PM. Park patrons must remove their cars from the parking lot before this time.

<b>Maximum Capacity</b>	North – 200 people; Middle – 400 people; South – 350 people
<b>Available Hours</b>	4:00am to 2:00am (See above note regarding parking lot hours)
<b>Food/Beverages</b>	Food is allowed on site and alcohol is not permitted. No glass containers.
<b>Restrooms</b>	There are restrooms on the north and south end of Crown Point.
<b>Fee</b>	Contact the Permit Center at (619) 235-1169 for fee information.

### Directions & Parking

From South or East San Diego, take I-8 to the Sports Arena Blvd. exit, make a right onto West Mission Bay Drive and continue straight to Ingraham Street. Cross over 2 bridges then go right onto Crown Point Drive. Several large parking lots will be on the right-hand side.

From North San Diego, take I-5 to the Sea World Drive exit, make a right onto Sea World Drive and continue straight to Ingraham Street. Cross over 2 bridges then go right onto Crown Point Drive. Several large parking lots will be on the right-hand side.

Parking is free in these lots.

[Park & Recreation Home](#) | [General Information](#) | [Parks and Open Space](#) | [Recreational Activities & Programs](#) | [Golf Courses](#) | [Recreation Centers And Pools](#) |

[City of San Diego Home](#) | [Business](#) | [City Hall](#) | [Community](#) | [Departments](#) | [Information](#) | [Leisure](#) | [Services A-Z](#) | [Visiting](#) | [Top of Page](#) | [Search](#) | [Site Map](#) | [Awards](#) | [Contact the City](#) | [Privacy Notice](#) | [Disclaimers](#) | [Accessibility](#) |

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## **EXHIBIT 5**

Bayfair 2014  
Proposed Time Line

**Monday September 8<sup>th</sup> - 6AM to 6 PM**

Office trailers arrive and set in locations  
RV's arrive for on-site staff for week  
Equipment starts to arrive  
Fencing set-up begins  
Equipment trailers arrive  
Portable toilets are delivered for workers  
Bayfair Staff on site 24 hours

**Tuesday September 9<sup>th</sup> - 6 AM to 6 PM**

Equipment trailers set & unloading begins  
Fencing set-up continues  
Portable restrooms arrive & set-up begins  
Dumpsters arrive & set-up begins  
Sound trucks arrive and begin to set equipment.  
Docks transferred over to T-Dock  
Work starts at Crown Point North ramp  
Golf carts and Quads arrive for personnel to help with set-up  
Scaffolding set-up begins  
Striping of RV spaces begins

**Wednesday September 10<sup>th</sup> - 6AM to 6 PM**

Fencing set-up continues  
Scaffolding set-up continues  
Work continues on Crown Point ramp  
Race course survey set-up begins  
Crane arrives & docks are placed  
Portable restroom set-up continues  
Dumpster's set-up continues  
Canopies, tables & chairs arrive & set-up begins  
Equipment continues to arrive  
Fuel Pit is set up  
Safety meeting with volunteers  
Race teams start to arrive

## **Wednesday September 10<sup>th</sup> - 6AM to 6 PM (continued)**

Striping of RV Spaces & Vendor Areas continues  
Stages set-up begins

## **Thursday September 11<sup>th</sup> - 6 AM to 10 PM**

Fencing set-up continues  
Scaffolding set-up continues  
Work continues on ramp  
Cranes arrive & set-up begins  
Race course set-up begins  
Portable restroom set-up continues  
Dumpster's set-up continues  
Canopies, tables & chairs set-up continues  
Equipment continues to arrive  
Beer gardens set-up begins  
Boat Teams are placed in Pit Areas on all Islands  
RV Participants begin to arrive at noon and be placed in their designated spots  
Vendors begin to arrive & set-up begins  
Security guards monitor gates  
Venue becomes gated and event wristband is required for entrance into venue

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## **Friday September 12<sup>th</sup> – 6 AM to 11 PM**

Shuttles begin to operate at 7 am every 20 minutes in a continuous loop between Fiesta Island, Ski Beach & Crown Point.  
Safety & patrol boat meeting and roll call 7:15 am  
Gates open at 7 am for General Public  
Boats are on the water beginning at 8:00. On water activity will continue throughout the day till 5:30 pm (actual on water race schedule pending)  
Vendor booths open 8 am till 6:30 pm  
Beer Gardens open to the public at 10 am till 9:00 pm  
Free Style Demonstration 10 am to 5 pm – Crown Point & Fiesta Island & Ski Beach  
Bands 10:00 am to 10:00 pm  
Shuttle Stops at 6 pm for evening

## **Saturday September 13<sup>th</sup> 6 AM to 12 PM**

Shuttles begin to operate at 6 am every 20 minutes in a continuous loop between Fiesta Island, Ski Beach & Crown Point.

Safety & patrol boat meeting and roll call 7:15 am

Gates open at 7 am for General Public

Boats are on the water beginning at 8:00. On water activity will continue throughout the day till 5:30 pm (actual on water race schedule pending)

Vendor booths open 8 am till 6:30 pm

Beer Gardens open to the public at 10 am till 9:00 pm

Free Style Demonstration 10 am to 5 pm – Crown Point & Fiesta Island & Ski Beach

Bands 10:00 am to 10:00 pm

Shuttle Stops at 6 pm for evening

## **Sunday September 14<sup>th</sup> 6 AM to 9 PM**

Shuttles begin to operate at 6 am every 20 minutes in a continuous loop between Fiesta Island, Ski Beach & Crown Point.

Safety & patrol boat meeting and roll call 7:15 am

Gates open at 7 am for General Public

Boats are on the water beginning at 8:30. On water activity will continue throughout the day till 5:30 pm (actual on water race schedule pending)

Vendor booths open 8 am till 6:30 pm

Beer Gardens open to the public at 10 am till 6:30 pm

Free Style Demonstration 10 am to 5 pm – Crown Point & Fiesta Island & Ski Beach

Bands 10:00 am to 4:00 pm

Awards Ceremony 5:00 pm

Shuttle Stops at 6 pm for evening

Vendors begin tear down & departure

Boat teams begin tear down and departure

RV's begin tear down & departure

## **Monday September 15<sup>th</sup> 6 AM to 6 PM**

Office trailer removal begins

Fence removal begins

Portable restroom removal begins

Dock removal begins

Scaffolding Removal

Remaining vendors depart

Clean-up begins

Equipment removal begins

Boat teams continue tear down & departure

### **Monday September 15<sup>th</sup> 6 AM to 6 PM (continued)**

Loading of equipment trailers begin  
RV's continue tear down & departure  
Clean-up & tear down committees still on site

### **Tuesday September 16<sup>th</sup> 6:00 AM to 6:00 PM**

Fence removal continues  
Portable restroom removal continues  
Clean-up continues  
Equipment removal continues  
Boat teams continue to depart  
Loading and removal of equipment trailers continues

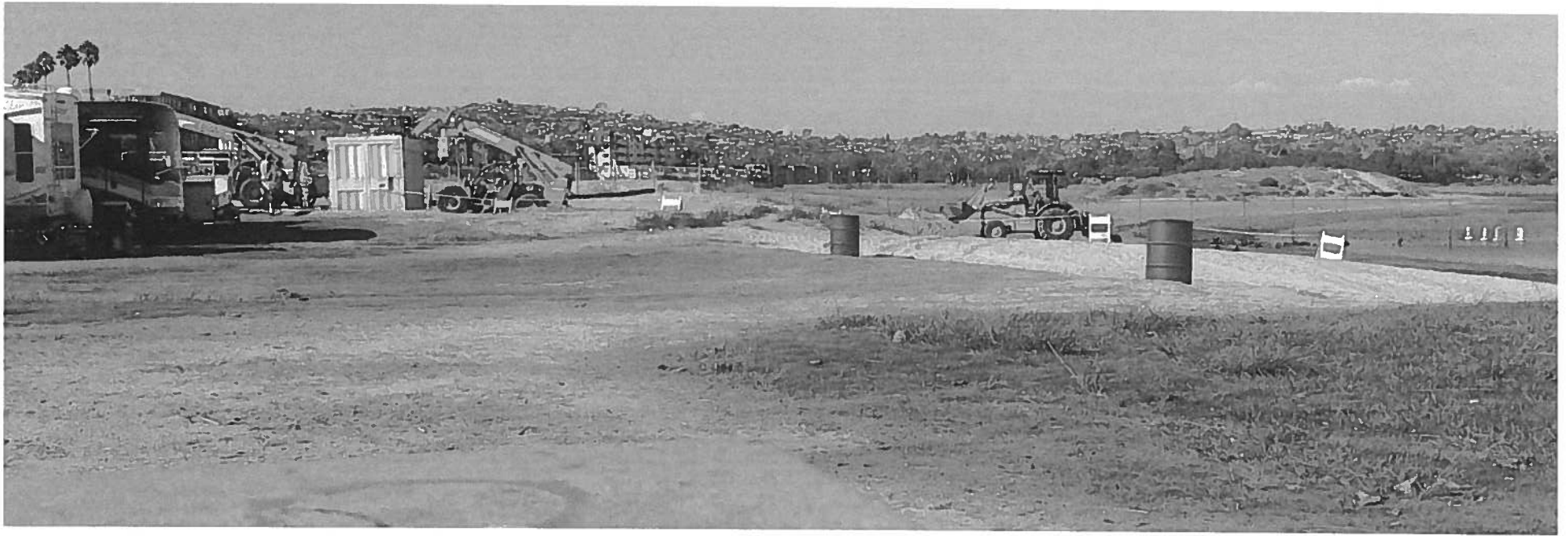
### **Wednesday September 17<sup>th</sup> 9:00 AM**

Meeting with park rangers for final walk thru and turn park over to City

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## **EXHIBIT 6**





**Thunderboats**

**September 11, 2014**